SETTLEMENT AND PREVENTION OF INDUSTRIAL DISPUTES IN NEW ZEALAND

By Paul Kennaday,
New York.

New Zealand came upon the scene when railways were soon to to be a necessity, when home industries were being displaced by factories and when labor legislation in England was already giving expression to the new theory of the state's right and duty to protect the workers against the grosser forms of industrial barbarity. The stubborn fighting of the native Maoris helped to knit together all the more strongly the isolated church colonists of 1840 and their early followers, and the government then established and so secured, rich in land but with a treasury depleted by the wars, freely sold of its many acres to its people eager to secure homes upon the land and the best of grazing pastures for their sheep.

As the colonists grew in number, later comers discovering that the richest and most accessible lands had been taken up by those first in the field, turned to the state for help, and land reform came to be a burning issue between those already on the land and those who demanded advances to settlers, low rentals, freeholds upon easy terms and the "bursting up" of large estates.

When private capital was lacking for the building of railways it needed no campaign of education, no butting against interests already vested, to induce the new settlers again to turn to their state for the opening up of lands required for settlement and for the further development of existing holdings. When shops and factories began to assume some importance in the new country and strikes came to be matters of not unusual occurrence and gross sweating in certain trades was disclosed, once again state aid was called for and this time with insistence by an urban working class steadily gaining in numbers upon the older middle class of pastoralists and employers. By 1890 the Progressive Party was brought into power for the first time through the votes of a united working class indignant over their complete defeat in the Maritime Strike, and by those who demanded land settlement laws much more liberal

in character that the large sheep-run holding and moneyed conservative class were prepared to countenance.

At the outset of the new régime under the remarkable and all-powerful Richard Seddon, one of his most able lieutenants, Mr. William Pember Reeves, Minister for Labour, laid before Parliament a well-considered plan for the compulsory arbitration of labor disputes. For three years even New Zealand law makers, busy with more urgent land reforms, viewed askance this novel scheme. But by dint of much persistence upon the part of its author the bill was enacted by a narrow margin in 1894, and thereafter has continued with many and frequent amendments to the present time. Of these amendments the most numerous and far-reaching were those of the session of 1908, when Parliament was compelled to recast the old act, now become thoroughly unsatisfactory to employers much perturbed by a half dozen small strikes in which the workers had successfully defied the law of the land and had withstood the judgments of the Court of Industrial Arbitration.

The present act, The Industrial Conciliation and Arbitration Act, 1908, and the seventy-four sections in amendment, of the same year, is a careful attempt to avoid the failures and causes for friction of the antecedent acts. Again conciliation becomes the foundation and the trade union remains the keystone to the arch bridging over the opposing interests and misunderstandings separating capital and labor. The worker may avail himself of the privileges of the act, only as he is a member of a registered union keeping regular books, having a common seal, with capacity to sue and be sued, whose property may be attached and whose members may be disciplined. Conciliation is first attempted between the union and the individual or associated employer; after that is exhausted, recourse is had to arbitration.

For the administration of the act the country is divided into industrial districts in each of which a Commissioner of Conciliation, holding a salaried three-years' appointment from the governor, is ready, upon application to him made by employer or employee, to set up a Council of Conciliation for the hearing of any case involving differences not adjustable by the parties themselves. Each side may nominate one, two, or three representatives, who, if accepted by the commissioner, then as a Council of Conciliation under the chairmanship of the commissioner, proceed to hold public hearings

of the matters in dispute. The council has the usual powers to summon witnesses, to administer oaths, to examine books and papers, and has a wide latitude in the matter of procedure and the character of the evidence it will admit. The hearings, marked by informality and freedom from legal technicalities, become, in fact, amicable conferences of men mutually desirous of settling their differences upon the best terms possible. The council members being men trained in the trade under review, handle with a dispatch surprising to the layman the intricate and lengthy trade logs before them and adjust to a penny, indeed to a half penny, day-work and piecework rates. Whether it be wages, hours, the open or closed shop, or any other of the causes of friction between employer and employed, if an agreement is reached by this council of representatives, an award is drawn up and filed with the registrar appointed to administer the act and the parties are forthwith bound for any period agreed upon of not more than three years.

In case no settlement of the dispute is possible, the council is authorized to "make such recommendation for the settlement of the dispute according to the merits and substantial justice of the case as the council thinks fit and may state in the recommendation whether, in the opinion of the council, the failure of the parties to arrive at a settlement was due to unreasonableness or unfairness of any of the parties to the dispute." This provision, taken from the Canadian Industrial Disputes Act, is an attempt to put the responsibility for failure to agree where it belongs and to inform the public of the true nature of the dispute. It is, however, a counsel of perfection not likely to have much bearing on actual disputes as the assessors, representatives of opposing sides, must be unanimously agreed before the recommendation may be made.

But whether such opinion is delivered or not, all cases before councils in which settlements are not "sooner arrived at by the parties and embodied in an industrial agreement duly executed" must be referred to the Court of Arbitration not earlier than one month or later than two months after the date fixed by statute for the original hearing of the dispute before a council. The court of arbitration thus becomes a court of appeals, divested now of all its former original jurisdiction, and so, as an important consequence, no longer weighted down with a calendar of cases so long that its decisions cannot be rendered without a delay causing loud complaint

from parties demanding some immediate and definite basis for their daily relations.

Again the litigants appear before referees of their own selection, predisposed, it may be assumed, one part to one view and the other to the opposing view of the controversy. If one judge of supreme court qualifications, holding office for life on appointment from the governor and two "nominated members", appointed for three years upon recommendation respectively of employers and workers, may not seem as unprejudiced and impartial a tribunal as might be desirable to mete out exact justice, the practical-minded New Zealander would admit the compromise and point out that the complexities of the situation had driven him to it. As a matter of fact, the two nominated members of the court would fill no very useful function if a competent judge were found willing to retain his office for more than a few years. But the position is an arduous one, open to almost constant and often bitter criticism, and the presiding judge, before he has long been upon this novel bench, is anxious to return to the more peaceful channels of law gliding along through well-marked precedents. And so the court representatives of employers and employed, though they may usually be depended upon to take opposite views on general principles, render a distinct service in bringing to bear upon technical trade questions a more exact information than would usually be possessed by the usual judge learned only in the law.

The proceedings before the court, though somewhat more formal in character than those before the councils, yet have little of the delays and circumlocutions and technicalities of the common law court, an end in numerous ways sought to be obtained by the statute makers, and by none with more general approval than by the prohibition of the representation of parties through lawyers. In addition to the more speedy trials thus assured and the relief to the court from the burden of original jurisdiction formerly held by it, the enforcement of judgments and the collection of fines and penalties is now left largely with the magistrates' courts. As a result the court may now attend to the business brought before it with the despatch which the peculiar and pressing nature of that business manifestly requires.

In its judgments the court may impose preference in employment to unionists, if competent unionists offer from unions open

upon small stated initiation fees and dues to all of sufficient trade skill who apply; it may fix a minimum wage, making lower allowances for "under-rate," incompetent labor; it may determine hours of employment and the amount of compensation for overtime work; it may bring in employers and unions of workers not parties to the original proceedings, and it may make its decisions a common rule for one or more industrial districts.

By so providing for the immediate calling together of representative expert conciliators and by setting up a permanent ready appeal court with peculiar knowledge of industrial matters, coupled with large powers in their regulation, a most effective method seems to have been adopted for the prevention of strikes and lockouts. Express penalties, such as the suspension of union registration and fines ranging from $50 to $2,500, may be imposed in case of strikes or lockouts by parties bound by an award, or who are before council or court for a determination of their claims, and no part of the act came in for more heated discussion at the time of the latest amendments than these strike-prevention clauses. Employers, smarting under the well-founded conviction that the old act held them willy-nilly, while the workers were free to obey or to disregard judgments rendered against them, went so far as to demand imprisonment as a penalty for striking. The minister for labor actually brought in a bill so to promote conciliation and industrial peace. But it is not through the fear of fine, and certainly not through the martyrdom of imprisonment, that men and women are to be lead to agree with their masters. The new act will continue to succeed as a preventive of strikes in spite of its strike-prevention clauses, rather than because of them.

But whatever may be the measure of success of this new arbitration and conciliation act, and however much the old act may have helped to prevent strikes in New Zealand, before it is concluded that industrial legislation of this character would be practicable in larger and more complex industrial communities, it is necessary to consider certain conditions unique to New Zealand which have had a far-reaching effect upon the operation of all her labor legislation. Consideration must be given to the manner in which the country came to adopt the principle of state intervention in labor disputes along with other measures of a state socialistic character. Even when compulsory arbitration was in its first early experimental days

the people of New Zealand had become accustomed to a wide application of the principle of state aid and intervention. These settlers in this far-off country were a homogeneous people, British born or British descended almost to a man, driven to their fertile island home by a common impulse to make a better and an easier living than was possible for them in the old, crowded, slow-changing England, full of hope, with a large measure of determination to build better than their fathers, and possessed of their father's respect for law as law. The labor leader's shocked reply to the natural American suggestion that his union should strike to remedy an intolerable situation, "Why, it's against the law, Sir!" was an illustration of an un-American attitude of mind that in itself has made compulsory arbitration in New Zealand possible. Coupled with this is a respect for the judiciary and a respectable judiciary not yet attainable in a land where it is common report that more than one judge has been placed upon the bench by this or that corporate interest, while others have paid to their political masters from ten thousand dollars to one hundred thousand dollars for nominations. With an inevitable class consciousness in presiding judges of the New Zealand Arbitration Court, labor takes for granted and even objects, and at times, strongly, that it cannot appear before a judge uninfluenced by a certain prejudice, unconscious but none the less actual, in favor of the employing class in which the judges have been born and reared, where their friends and former clients are. But of their venality, of deliberate unfairness, of intended partiality, of dishonesty and corruption in securing office, not a suggestion is ever made and no suspicion seems ever to be entertained.

As compared with countries where a constant and large fringe of unemployed are ever driven by want to depress the wages of the employed, New Zealand labor is peculiarly fortunate and intends by all restrictive immigration laws in its power to continue so to remain. There is a relative scarcity of labor in New Zealand, especially of skilled factory labor, that of itself maintains wages and makes demands for their increase or for the reduction of hours difficult to withstand. Coupled with this has taken place a large increase in the spending power of a community of less than a million souls whose exports have increased from $41,000,000 to nearly $100,000,000 in the fifteen years since the arbitration act has been in force, and whose government has borrowed abroad, and spent

largely at home, moneys now totaling $332,000,000 as against $200,000,000 of national debts in 1895. It has been easy enough to pay the piper while the dance was on and all had money in their pockets. But when retrenchment in borrowing shall become necessary and when it becomes manifest at last to the most unblushing of protectionists that tariff walls cannot be raised any higher about the fields and flocks of New Zealand, it will be no longer the facile and acceptable device it is now to shift on to the consumer the cost of court-increased wages. Even the steady, compromising English descended New Zealand workman, with all his inherited respect for law in general, with his acquired dependence upon the arbitration act in particular has manifested upon several occasions a surprising inclination toward forcible objections when demanded improvement in wages and hours have been withheld. It is by no means certain that when the arbitration court refuses to place further burdens upon industry face to face with a falling market, that then New Zealand will be free of strikes. But it will be freer than if without its conciliation and arbitration act, and until then, and in part because of the act, New Zealand, no doubt will continue to enjoy the blessings of industrial peace.

That the compulsory and court features of the New Zealand act could not be applied in America or in any other large country of great and varied industrial interests seems almost as patent as that conciliation upon the New Zealand model would be not only desirable but altogether possible of accomplishment. The mere machinery in readiness to move disputing parties to a reasonable and quiet consideration of each other's side would prevent not a few open ruptures, while hearings held and cases discussed could hardly fail often to end in satisfactory settlements.

But the experience of New Zealand points to the conclusion that in proceedings of this nature the state and its tribunals must deal with the union of the workers; cannot, indeed, but refuse to grant to the ununionized, irresponsible individual workers his day in this particular sort of a court. So long as American employers continue to fight unionism as unionism, to insist upon the shop closed to unionists, to blacklist strikers, and to refuse to recognize that steam and electricity have altered the status of the industrial worker even as they have revolutionized industry, an American act for the conciliation of labor disputes, would be but one more added to our long list of moral aspirations enshrined in statutes.